IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A. O. NO. 488 OF 2004

NABI AHMED S/O NOOR MOHAMMED
AND ORS. ... Appellants
vs.
ANIS AHMED S/O MOHAMMED
JUNAID AND ORS. . ... Respondents

Mr. S. A. Shaikh for appellants.
Mr. R. M. Vanoo for respondent no.1,
Ms. Geeta Joglekar for BMC.

CORAM: D. G. KARNIK **J.**

DATE: 18th October 2006

P.C.:

1. This appeal is directed against the order dated 12th April 2004 passed by the City Civil Court, Mumbai, dismissing appellants' Notice of Motion No. 1503 of 2003 for injunction.
2. The appellants filed a suit bearing L. C. Suit no. 1898 of 2003 in the City Civil Court, Mumbai for a declaration that the approval of the plan on 18th May 2002 by the respondent No. 5 for construction of weigh bridge on the suit land bearing City Survey No. 623 was illegal, null and void and for an injunction restraining the defendant nos. 1 to 4 for running of

the weigh bridge in pursuance of the plan sanctioned by respondent no.5.

3. In the suit the appellants took out a motion bearing N.M. No. 1503 of 2003 for an injunction restraining the respondent no.5 from granting permission to respondent nos. 1 to 4 for the purpose of running of weigh bridge on the suit land. After hearing the parties by an order dated 12th April 2004 the learned judge of the City Civil Court dismissed the motion. That order is impugned in this appeal.

4. Learned counsel for the respondents, apart from supporting the reasons given in the impugned order submitted that the suit itself was not maintainable and the plaintiff had not made out a prima facie case. Learned counsel for the respondents relied upon a decision of the Supreme Court in Shri **Shiv Kumar Chadha vs. Delhi Municipal Corporation & ors.**, reported in (1993) 3 SCC 161, wherein the Supreme Court has laid down that for grant of injunction the plaintiff must make out a strong prima facie case, including the question of maintainability of the suit.

5. Section 527 of the Bombay Municipal Corporation Act 1888 prescribes that no suit shall be instituted against the Corporation or against the Commissioner or against any municipal officer or servant, in respect of any act done in pursuance or execution or intended execution of the act until the expiration of one month next after notice in writing has

been given. It is not disputed that under the BMC Act the respondent no.1 has power to grant licence for weigh bridge. The action of the respondent no.5 for granting of the licnece to respondents no. 2. 1 to 4 is in pursuance or in execution of the pwoers conferred under the Act. Hence a suit against the Municipal Corporation for restraining such an action can be filed only after notice in writing. In the present case no notice has been issued.

6. In para 14 of the plaint it is mentioned that a notice under section 527 of the BMC Act is not issued because of urgency. There is no provision under the Act for dispensing with the issuance of the notice in respect of a suit which was required to be filed urgently. Even otherwise there was no urgency in filing of the suit. The permission was granted on 18th May 2002. The suit was filed after 11 months of the grant of the permission and therefore there was no urgency in filing of the suit. During this period the appellant certainly could have issued the notice. In the circumstances the suit is prima facie not maintainable. The appellants therefore had not made out prima facie case even about the maintainability of the suit and were not entitled to an injunctive relief. For these reasons the appeal is dismissed.

(D.G. KARNIK J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil application No. 668 of 2004
in
A. O. NO. 488 OF 2004

NABI AHMED S/O NOOR MOHAMMED
AND ORS. ... Appellants
vs.
ANIS AHMED S/O MOHAMMED
JUNAID AND ORS. . ... Respondents

Mr. S. A. Shaikh for appellants.
Mr. R. M. Vanoo for respondent no.1,
Ms. Geeta Joglekar for BMC.

CORAM: D. G. KARNIK **J.**

DATE: 18th October 2006

P.C.:

In view of the disposal of the appeal this civil application does not survive and is disposed of.

(D.G. KARNIK J.)